

## RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies)/Execution Date(s):**  
CKR Acquisition Corp. (a Delaware Corp.)

Chevys Restaurants, LLC  
(a Delaware Limited Liability Company)

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☐ Corporation-State - See Above  
☐ Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Execution Date(s) 01/11/2005

Additional names of conveying parties attached? ☐ Yes ☒ No

**3. Nature of conveyance:**

- ☐ Assignment ☐ Merger  
☒ Security Agreement ☐ Change of Name  
☐ Other \_\_\_\_\_

**2. Name and address of receiving party(ies)** ☐ Yes  
Additional names, addresses, or citizenship attached? ☒ No

Name: Fleet National Bank

Internal

Address: \_\_\_\_\_

Street Address: 100 Federal Street

City: Boston

State: Massachusetts

Country: U.S.A. Zip: 02110

- ☐ Association Citizenship \_\_\_\_\_  
☐ General Partnership Citizenship \_\_\_\_\_  
☐ Limited Partnership Citizenship \_\_\_\_\_  
☐ Corporation Citizenship \_\_\_\_\_  
☒ Other National Banking Association Citizenship \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☒ No  
(Designations must be a separate document from assignment)

**4. Application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s)

See Attached Schedule

B. Trademark Registration No.(s)

See Attached Schedule

Additional sheet(s) attached? ☒ Yes ☐ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

**5. Name & address of party to whom correspondence concerning document should be mailed:**

Name: Eileen Sullivan

Internal Address: Bingham McCutchen LLP

Street Address: 150 Federal Street

City: Boston

State: Massachusetts Zip: 02110

Phone Number: 617-951-8000

Fax Number: 617-951-8736

Email Address: eileen.sullivan@bingham.com

**6. Total number of applications and registrations involved:**

32

**7. Total fee (37 CFR 2.6(b)(6) & 3.41)** \$ 815.00

- ☒ Authorized to be charged by credit card  
☐ Authorized to be charged to deposit account  
☐ Enclosed

**8. Payment Information:**

a. Credit Card Last 4 Numbers 8880  
Expiration Date 10/2007

b. Deposit Account Number \_\_\_\_\_  
Authorized User Name \_\_\_\_\_

**9. Signature:** Eileen Sullivan

Signature

March 2, 2005

Date

Eileen Sullivan

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 32

**SCHEDULE A****U.S. Trademarks and Trademark Registrations****Assignor: Chevys Restaurants, LLC**

Trademark or <u>Service Mark</u>	Federal Registrations -- United States Patent and Trademark Office	
	<u>Serial/Registration No.</u>	<u>Filing/Registration Date</u>
A FEAST FOR ALL YOUR SENSES	1,402,576	07/22/86
BIG CITY WRAPS	2,213,618	12/29/98
BIG CITY WRAPS (Design)	2,047,645	03/25/97
CASA LUPITA	1,384,873	03/04/86
CHEVYS EXPRESS MEX	2,375,705	08/08/00
CHEVYS EXPRESS MEX (and Design)	2,579,149	06/11/02
CHEVYS FRESH MEX	2,066,652	06/03/97
CHEVYS FRESH MEX	2,251,029	06/08/99
CHEVYS MEXICAN RESTAURANT	2,238,359	04/13/99
CHEVYS MEXICAN RESTAURANT (Stylized)	1,624,237	11/20/90
Design of a Woman (Casa Lupita)	1,311,681	12/25/84
EL MACHINO	1,951,323	01/23/96
FAMOUS FOR FAJITAS AND FIESTAS	1,446,992	07/07/87
FRESH MEX	1,613,407	09/11/90

Trademark or Service Mark	Federal Registrations -- United States Patent and Trademark Office	
	<u>Serial/Registration No.</u>	<u>Filing/Registration Date</u>
FRESH MEX	1,750,598	02/02/93
FRESH MEX TEQUINI	2,409,955	12/05/00
FUZIO	2,248,206	05/25/99
FUZIO FIRECRACKER PORK FUSILLI	2,601,239	07/30/02
FUZIO UNIVERSAL PASTA	2,404,991	11/21/00
FUZIO UNIVERSAL PASTA (and Design)	2,409,717	12/05/00
FUZIOTINI	2,300,529	12/14/99
Miscellaneous Design - Ice Machine	2,218,094	01/19/99
RIO BRAVO and Stylized Horizontal Design	2,479,519	08/21/01
RIO BRAVO and Stylized Stack Design	2,499,694	10/23/01
RIO BRAVO CANTINA	1,388,655	04/01/86
RIO BRAVO CANTINA (and Design)	1,434,357	03/24/87
RIO BRAVO CANTINA (and Design)	2,163,201	06/09/98
UNFORGETTABLE MEX	2,277,837	09/14/99
UNIVERSAL MARTINIS	2,375,706	08/08/00
UNIVERSAL PASTA	2,496,482	10/09/01
VIVA GRANDE LUNCH BAR	1,338,521	05/28/85

**Pending U.S. Trademarks and Trademark Registrations**

**Assignor: Chevys Restaurants, LLC**

FUZIO & Design	78/238997	04/17/03
----------------	-----------	----------

**Foreign Trademark Registrations**

**Assignor: Chevys Restaurants, LLC**

Trademark or <u>Service Mark(Class)</u>	<u>Country</u>	Foreign Registrations	
		<u>Registration No.</u>	<u>Reg. Date</u>
CHEVYS	European Community	196,626	11/18/98
CHEVYS MEXICAN RESTAURANT (Stylized)	Canada	TMA46241	08/30/96
FRESH MEX	European Community	196,584	05/08/00
RIO BRAVO CANTINA	Canada	TMA50525	12/08/98

**U.S. Trademarks and Trademark Registrations**

**Assignor: CKR Acquisition Corp.**

None.

**Pending U.S. Trademarks and Trademark Registrations**

**Assignor: CKR Acquisition Corp.**

None.

**Foreign Trademark Registrations**

**Assignor: CKR Acquisition Corp.**

None.

**TRADEMARK COLLATERAL  
SECURITY AND PLEDGE AGREEMENT**

**TRADEMARK COLLATERAL SECURITY AND PLEDGE AGREEMENT**  
dated as of January 11, 2005, by and among CKR Acquisition Corp., a Delaware corporation ("**CKR**"), Chevys Restaurants, LLC, a Delaware limited liability company ("**Chevys**", and together with CKR, each, an "**Assignor**", and collectively, the "**Assignors**"), and Fleet National Bank, a national banking association, as agent (hereinafter, in such capacity, the "**Agent**") for itself and such other lending institutions (collectively, the "**Lenders**") which are or may become parties to an Amended and Restated Revolving Credit Agreement dated as of March 31, 2004 (as amended and in effect from time to time, the "**Credit Agreement**"), among the Assignors, the other Borrowers named therein, the Lenders and the Agent.

**WHEREAS**, it is a condition precedent to the Lenders' continuing to make any loans or otherwise extending credit to the Borrowers under the Credit Agreement that the Assignors execute and deliver to the Agent, for the benefit of the Lenders and the Agent, a trademark agreement in substantially the form hereof;

**WHEREAS**, the Assignors have joined into the Security Agreement (as defined in the Credit Agreement) pursuant to the Joinder Agreement, dated as of November 17, 2004, by and among CKR, the other Borrowers referred to therein, and the Agent (the "**CKR Joinder**") and the Joinder Agreement, dated as of December 20, 2004, by and among Chevys, the other Borrowers referred to therein, and the Agent (the "**Chevys Joinder**"), pursuant to which the Assignors have granted to the Agent, for the benefit of the Lenders and the Agent, a security interest in substantially all of the Assignors' personal property and fixture assets; and

**WHEREAS**, this Trademark Agreement is supplemental to the provisions contained in the Security Agreement;

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. DEFINITIONS.**

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Credit Agreement. In addition, the following terms shall have the meanings set forth in this §1 or elsewhere in this Trademark Agreement referred to below:

Assignment of Marks. See §2.1.

Associated Goodwill. All goodwill of each Assignor and its business, products and services appurtenant to, associated with or symbolized by the Trademarks and the use thereof.

Materially Adverse Effect. A materially adverse effect on the properties, assets, financial condition or business of the Borrowers and their Subsidiaries or material impairment of the right of the Borrowers and their Subsidiaries, taken as a whole, to carry on business substantially as now conducted by them, or any questioning of the validity of this Trademark Agreement or any of the other Loan Documents, or any action taken or to be taken pursuant hereto or thereto

Pledged Trademarks. All of each Assignor's right, title and interest in and to all of the Trademarks, the Trademark Registrations, the Trademark License Rights, the Trademark Rights, the Associated Goodwill, the Related Assets, and all accessions to, substitutions for, replacements of, and all products and proceeds of any and all of the foregoing.

PTO. The United States Patent and Trademark Office.

Related Assets. All assets, rights and interests of each Assignor that uniquely reflect or embody the Associated Goodwill, including the following:

(a) all patents, inventions, copyrights, trade secrets, confidential information, formulae, methods or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision and sale of goods or services under or in association with any of the Trademarks; and

(b) the following documents and things in the possession or under the control of any Assignor, or subject to its demand for possession or control, related to the production, delivery, provision and sale by any Assignor, or any affiliate, franchisee, licensee or contractor, of products or services sold by or under the authority of any Assignor in connection with the Trademarks or Trademark Rights, whether prior to, on or subsequent to the date hereof:

(i) all lists, contracts, ancillary documents and other information that identify, describe or provide information with respect to any customers, dealers or distributors of any Assignor, its affiliates or franchisees or licensees or contractors, for products or services sold under or in connection with the Trademarks or Trademark Rights, including all lists and documents containing information regarding each customer's, dealer's, suppliers' or distributor's name and address, credit, payment,

discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity;

(ii) all agreements (including franchise agreements), product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision and sale of products or services under or in connection with the Trademarks or Trademark Rights;

(iii) all documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery and sale of products or services under or in connection with the Trademarks or Trademark Rights; and

(iv) all agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by any Assignor (or any of its affiliates, franchisees, licensees or contractors) of products or services sold under or in connection with the Trademarks or Trademark Rights.

Trademark Agreement. This Trademark Collateral Security and Pledge Agreement, as amended and in effect from time to time.

Trademark License Rights. Any and all past, present or future rights and interests of any Assignor pursuant to any and all past, present and future franchising or licensing agreements in favor of any Assignor, or to which any Assignor is a party, pertaining to any Trademarks, Trademark Registrations, or Trademark Rights owned or used by third parties in the past, present or future, including the right (but not the obligation) in the name of any Assignor or the Agent to enforce, and sue and recover for, any breach or violation of any such agreement to which any Assignor is a party.

Trademark Registrations. All past, present or future federal, state, local and foreign registrations of the Trademarks, all past, present and future applications for any such registrations (and any such registrations thereof upon approval of such applications), together with the right (but not the obligation) to apply for such registrations (and prosecute such applications) in the name of any Assignor or the Agent, and to take any and all actions necessary or appropriate to maintain such registrations in effect and renew and extend such registrations.

Trademark Rights. Any and all past, present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law or otherwise, including the following: all such rights arising out of or associated with the Trademark Registrations; the right (but not the obligation) to register claims under any state, federal or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or cancellation

proceedings in the name of any Assignor or the Agent for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the Trademark Rights, or the Associated Goodwill, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury; and the Trademark License Rights.

Trademarks. All of the trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, elements of package or trade dress, and other source and product or service identifiers, used or associated with or appurtenant to the products, services and businesses of any Assignor, that (i) are set forth on Schedule A hereto, or (ii) have been adopted, acquired, owned, held or used by any Assignor or are now owned, held or used by any Assignor, in any Assignor's business, or with any Assignor's products and services, or in which any Assignor has any right, title or interest, or (iii) are in the future adopted, acquired, owned, held and used by any Assignor in any Assignor's business or with any Assignor's products and services, or in which any Assignor in the future acquires any right, title or interest.

use. With respect to any Trademark, all uses of such Trademark by, for or in connection with any Assignor or its business or for the direct or indirect benefit of any Assignor or its business, including all such uses by such Assignor itself, by any of the affiliates of any Assignor, or by any franchisee, licensee or contractor of any Assignor.

Unless otherwise provided herein, the rules of interpretation set forth in §1.2 of the Credit Agreement shall be applicable to this Trademark Agreement.

## 2. GRANT OF SECURITY INTEREST.

2.1. Security Interest; Assignment of Marks. As collateral security for the payment and performance in full of all of the Obligations, each Assignor hereby unconditionally grants to the Agent, for the benefit of the Lenders and the Agent, a continuing security interest in and first priority lien on all of such Assignor's right, title and interest to the Pledged Trademarks, and pledges and mortgages (but does not transfer title to) such Assignor's right, title and interest to the Pledged Trademarks to the Agent for the benefit of the Lenders and the Agent. In addition, each Assignor hereby agrees upon the request of the Agent following and during the continuance of an Event of Default, to execute, and in addition hereby confirms that pursuant to §10 hereof such Assignor has constituted and appointed the Agent as such Assignor's true and lawful attorney in fact to execute on such Assignor's behalf, an assignment of federally registered trademarks and other registered trademarks in substantially the form of Exhibit 1 hereto (the "Assignment of Marks"). Each Assignor hereby authorizes the Agent to complete as assignee and record with the PTO and any other relevant authority the Assignment of Marks upon the occurrence and during the continuance of an Event of Default and the proper exercise of the Agent's remedies under this Trademark Agreement and the Security Agreement.



2.2. **Conditional Assignment.** In addition to, and not by way of limitation of, the grant, pledge and mortgage of the Pledged Trademarks provided in §2.1, each Assignor grants, assigns, transfers, conveys and sets over to the Agent, for the benefit of the Lenders and the Agent, such Assignor's entire right, title and interest in and to the Pledged Trademarks; provided that such grant, assignment, transfer and conveyance shall be and become of force and effect only (i) upon or after the occurrence and during the continuance of an Event of Default and (ii) either (A) upon the written demand of the Agent at any time during such continuance or (B) immediately and automatically (without notice or action of any kind by the Agent) upon an Event of Default for which acceleration of the Loans is automatic under the Credit Agreement or upon the sale or other disposition of or foreclosure upon the Collateral pursuant to the Security Agreement and applicable law (including the transfer or other disposition of the Collateral by any Assignor to the Agent or its nominee in lieu of foreclosure).

2.3. **Supplemental to Security Agreement.** Pursuant to the Security Agreement each Assignor has granted to the Agent, for the benefit of the Lenders and the Agent, a continuing security interest in and lien on such Assignor's right, title and interest to the Collateral (including the Pledged Trademarks). The Security Agreement, and all rights and interests of the Agent in and to the Collateral (including the Pledged Trademarks) thereunder, are hereby ratified and confirmed in all respects. In no event shall this Trademark Agreement, the grant, assignment, transfer and conveyance of the Pledged Trademarks hereunder, or the recordation of this Trademark Agreement (or any document hereunder) with the PTO or any other relevant authority, adversely affect or impair, in any way or to any extent, the Security Agreement, the security interest of the Agent in the Collateral (including the Pledged Trademarks) pursuant to the Security Agreement and this Trademark Agreement, the attachment and perfection of such security interest under the Uniform Commercial Code (including the security interest in the Pledged Trademarks), or any present or future rights and interests of the Agent in and to the Collateral under or in connection with the Security Agreement, this Trademark Agreement or the Uniform Commercial Code. Any and all rights and interests of the Agent in and to the Pledged Trademarks (and any and all obligations of each Assignor with respect to the Pledged Trademarks) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of the Agent (and the obligations of each Assignor) in, to or with respect to the Collateral (including the Pledged Trademarks) provided in or arising under or in connection with the Security Agreement and shall not be in derogation thereof.

### 3. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Each Assignor represents, warrants and covenants that: (i) Schedule A sets forth a true and complete list of all material Trademarks and all Trademark Registrations now owned, licensed, controlled or used by any Assignor; (ii) the Trademarks and Trademark Registrations are subsisting and have not been adjudged invalid or

unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of the Trademarks or Trademark Registrations that could be reasonably expected to, either in any case or in the aggregate, have a Materially Adverse Effect; (iii) to the best of each Assignor's knowledge, each of the Trademarks and Trademark Registrations is valid and enforceable; (iv) to the best of each Assignor's knowledge, there is no infringement by others of the Trademarks, Trademark Registrations or Trademark Rights that could be reasonably expected to, either in any case or in the aggregate, have a Materially Adverse Effect; (v) except as set forth on Schedule 8.6.2 to the Credit Agreement, no claim has been made that the use of any of the Trademarks does or may violate the rights of any third person, and to the best of each Assignor's knowledge, there is no infringement by any Assignor of the trademark rights of others; (vi) the Assignors are the sole and exclusive owners of the entire and unencumbered right, title and interest in and to each of the Trademarks (other than ownership and other rights reserved by third party owners with respect to Trademarks that any Assignor is licensed to use), free and clear of any liens, charges, encumbrances and adverse claims, including pledges, assignments, licenses, registered user agreements and covenants by any Assignor not to sue third persons, other than the security interest and assignment created by the Security Agreement, this Trademark Agreement and any Trademark License Rights; (vii) each Assignor has the unqualified right to enter into this Trademark Agreement and to perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents, consultants, licensors and licensees that will enable them to comply with the covenants herein contained; (viii) each Assignor has used, and will continue to use, proper statutory and other appropriate proprietary notices in connection with its use of the Trademarks; (ix) each Assignor has used, and will continue to use for the duration of this Trademark Agreement, consistent standards of quality in its manufacture and provision of products and services sold or provided under the Trademarks; (x) this Trademark Agreement, together with the Security Agreement, will create in favor of the Agent a valid and perfected first priority security interest in the Pledged Trademarks (other than foreign Trademarks) upon making the filings referred to in clause (xi) of this §3; and (xi) except for the filing of financing statements with the Secretary of State for the State of Delaware under the Uniform Commercial Code and the recording of this Trademark Agreement with the PTO, no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (A) for the grant by each Assignor or the effectiveness of the security interest and assignment granted hereby or for the execution, delivery and performance of this Trademark Agreement by each Assignor, or (B) for the perfection of or the exercise by the Agent of any of its rights and remedies hereunder, provided that the representation, warranty and covenant in this clause (xi) shall not apply to foreign Trademarks.

#### 4. INSPECTION RIGHTS.

Each Assignor hereby grants to each of the Agent and the Lenders and its employees and agents the right to visit such Assignor's Stores and other facilities that prepare, manufacture, inspect or store products sold under any of the Trademarks, and

to inspect the products and quality control records relating thereto on reasonable advance notice to such Assignor and at reasonable times during regular business hours.

5. NO TRANSFER OR INCONSISTENT AGREEMENTS.

Without the Agent's prior written consent, no Assignor will (i) mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Pledged Trademarks, or (ii) enter into any agreement (for example, a license agreement) that is inconsistent with the any Assignor's obligations under this Trademark Agreement or the Security Agreement. Notwithstanding anything herein to the contrary, however, each Assignor shall have the right to enter into licenses of the Pledged Trademarks in the ordinary course of business in connection with franchise agreements permitted under the Credit Agreement and upon prior written notice to the Agent.

6. AFTER-ACQUIRED TRADEMARKS, ETC.

6.1. After-acquired Trademarks. If, before the Obligations shall have been finally paid and satisfied in full, any Assignor shall obtain any right, title or interest in or to any other or new Trademarks, Trademark Registrations or Trademark Rights, the provisions of this Trademark Agreement shall automatically apply thereto and the Assignors shall provide to the Agent simultaneously with the delivery of the financial statements referred to in §9.4(c) of the Credit Agreement but in any event no later than one month after such event notice thereof in writing and execute and deliver to the Agent such documents or instruments as the Agent may reasonably request further to implement, preserve or evidence the Agent's interest therein. In addition, on the Agent's reasonable written request (not to exceed four times per calendar year so long as no Event of Default is continuing), the Assignors shall promptly provide the Agent with a revised version of Schedule A hereto showing any additions or revisions to the Trademark Registrations then owned by any Assignor.

6.2. Amendment to Schedule. Each Assignor authorizes the Agent to modify this Trademark Agreement and the Assignment of Marks, without the necessity of any Assignor's further approval or signature, by amending Schedule A hereto and the Annex to the Assignment of Marks to include any future or other Trademarks, Trademark Registrations or Trademark Rights under §2 or §6.

7. TRADEMARK PROSECUTION.

7.1. Assignors Responsible. Each Assignor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the Pledged Trademarks, and shall hold each of the Agent and the Lenders harmless from any and all costs, damages, liabilities and

expenses that may be incurred by the Agent or any Lender in connection with the Agent's interest in the Pledged Trademarks or any other action or failure to act in connection with this Trademark Agreement or the transactions contemplated hereby. In respect of such responsibility and in the event that trademark counsel is required, the Assignors shall retain trademark counsel reasonably acceptable to the Agent.

7.2. Assignors' Duties, etc. Each Assignor shall have the right and the duty, through trademark counsel reasonably acceptable to the Agent in the event that trademark counsel is required, to prosecute diligently any trademark registration applications of the Trademarks pending as of the date of this Trademark Agreement or thereafter, to preserve and maintain all rights in the Trademarks and Trademark Registrations, including the filing of appropriate renewal applications and other instruments to maintain in effect the Trademark Registrations and the payment when due of all registration renewal fees and other fees, taxes and other expenses that shall be incurred or that shall accrue with respect to any of the Trademarks or Trademark Registrations; provided that no Assignor shall have the duty to take any action with respect to any Trademark which has a minimal value or is otherwise no longer useful in the business of the Borrowers and their Subsidiaries. Any expenses incurred in connection with such applications and actions shall be borne jointly and severally by the Assignors. No Assignor shall abandon any filed trademark registration application, or any Trademark Registration or Trademark (other than any Trademark which has a minimal value or is otherwise no longer useful in the business of the Borrowers and their Subsidiaries), without the consent of the Agent, which consent shall not be unreasonably withheld.

7.3. Assignors' Enforcement Rights. Each Assignor shall have the right and the duty to bring suit or other action in such Assignor's own name to maintain and enforce the Trademarks, the Trademark Registrations and the Trademark Rights; provided that no Assignor shall have the duty to take any action with respect to any Trademark which has a minimal value or is otherwise no longer useful in the business of the Borrowers and their Subsidiaries. Such Assignor may require the Agent to join in such suit or action as necessary to assure such Assignor's ability to bring and maintain any such suit or action in any proper forum if (but only if) the Agent is completely satisfied that such joinder will not subject the Agent or any Lender to any risk of liability. Each Assignor shall promptly, upon demand, reimburse and indemnify the Agent for all damages, costs and expenses, including legal fees, incurred by the Agent pursuant to this §7.3.

7.4. Protection of Trademarks, etc. In general, each Assignor shall take any and all such actions (including institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for and enforce the Pledged Trademarks; provided that no Assignor shall have the duty to take any action with respect to any Trademark which has a minimal value or is otherwise no longer useful in the business of the Borrowers and their Subsidiaries. No

Assignor shall take or fail to take any action, nor permit any action to be taken or not taken by others under its control, that would adversely affect the validity, grant or enforcement of the Pledged Trademarks; provided that no Assignor shall have the duty to take any action with respect to any Trademark which has a minimal value or is otherwise no longer useful in the business of the Borrowers and their Subsidiaries.

**7.5. Notification by Assignors.** Promptly upon obtaining knowledge thereof, the Assignors will notify the Agent in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Trademarks or Trademark Registrations or any Assignor's rights, title or interests in and to the Pledged Trademarks, and of any event that does or reasonably could materially adversely affect the value of any of the Pledged Trademarks, the ability of any Assignor or the Agent to dispose of any of the Pledged Trademarks or the rights and remedies of the Agent in relation thereto (including but not limited to the levy of any legal process against any of the Pledged Trademarks).

## **8. REMEDIES.**

Upon the occurrence and during the continuance of an Event of Default, the Agent shall have, in addition to all other rights and remedies given it by this Trademark Agreement (including, without limitation, those set forth in §2.2, the Credit Agreement, the Security Agreement and the other Loan Documents) those rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the Commonwealth of Massachusetts, and, without limiting the generality of the foregoing, the Agent may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to any Assignor, all of which are hereby expressly waived, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Pledged Trademarks, or any interest that any Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Pledged Trademarks all expenses incurred by the Agent in attempting to enforce this Trademark Agreement (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in or by reference in the Security Agreement. Notice of any sale, license or other disposition of the Pledged Trademarks shall be given to the Assignors at least six (6) Business Days before the time that any intended public sale or other public disposition of the Pledged Trademarks is to be made or after which any private sale or other private disposition of the Pledged Trademarks may be made, which each Assignor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, the Agent may, to the extent permitted under applicable law, purchase or license the whole or any part of the Pledged Trademarks or interests therein sold, licensed or otherwise disposed of.

## **9. COLLATERAL PROTECTION.**

If any Assignor shall fail to do any act that it has covenanted to do hereunder, or if any representation or warranty of any Assignor shall be breached, the Agent, in its own name or that of any Assignor (in the sole discretion of the Agent), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and the Assignors agree jointly and severally promptly to reimburse the Agent for any cost or expense incurred by the Agent in so doing.

## **10. POWER OF ATTORNEY.**

If any Event of Default shall have occurred and be continuing, each Assignor does hereby make, constitute and appoint the Agent (and any officer or agent of the Agent as the Agent may select in its exclusive discretion) as such Assignor's true and lawful attorney-in-fact, with full power of substitution and with the power to endorse such Assignor's name on all applications, documents, papers and instruments necessary for the Agent to use the Pledged Trademarks, or to grant or issue any exclusive or nonexclusive license of any of the Pledged Trademarks to any third person, or to take any and all actions necessary for the Agent to assign, pledge, convey or otherwise transfer title in or dispose of any of the Pledged Trademarks or any interest of such Assignor therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts that such Assignor is obligated to execute and do hereunder. Such Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and releases each of the Agent and the Lenders from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by the Agent under this power of attorney (except for the Agent's gross negligence or willful misconduct). This power of attorney is coupled with an interest and shall be irrevocable for the duration of this Trademark Agreement.

## **11. FURTHER ASSURANCES.**

Each Assignor shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary or appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as the Agent may request or as may be necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Trademark Agreement, or to assure and confirm to the Agent the grant, perfection and priority of the Agent's security interest in the Pledged Trademarks.

## **12. TERMINATION.**

At such time as all of the Obligations have been finally paid and satisfied in full, this Trademark Agreement shall terminate and the Agent shall, upon the written request and at the expense of the Assignors (the Assignors being jointly and severally liable for such expense), execute and deliver to the Assignors all deeds, assignments and other instruments as may be necessary or proper to reassign and reconvey to and re-vest in the Assignors the entire right, title and interest to the Pledged Trademarks previously granted, assigned, transferred and conveyed to the Agent by the Assignors pursuant to this Trademark Agreement, as fully as if this Trademark Agreement had not been made, subject to any disposition of all or any part thereof that may have been made by the Agent pursuant hereto or the Security Agreement.

**13. COURSE OF DEALING.**

No course of dealing between any Assignor and the Agent, nor any failure to exercise, nor any delay in exercising, on the part of the Agent, any right, power or privilege hereunder or under the Security Agreement or any other agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**14. EXPENSES.**

Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and expenses incurred by the Agent in connection with the preparation of this Trademark Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance or renewal fees, encumbrances, or otherwise protecting, maintaining or preserving the Pledged Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Pledged Trademarks, shall be borne and paid by the Assignors, such liability to be borne jointly and severally.

**15. OVERDUE AMOUNTS.**

Until paid, all amounts due and payable by the Assignors hereunder shall be a debt secured by the Pledged Trademarks and other Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Credit Agreement.

**16. NO ASSUMPTION OF LIABILITY; INDEMNIFICATION.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER THE AGENT NOR ANY LENDER ASSUMES ANY**

LIABILITIES OF ANY ASSIGNOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING SUCH ASSIGNOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE PLEDGED TRADEMARKS OR ANY USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY THE RESPONSIBILITY OF SUCH ASSIGNOR, AND THE ASSIGNORS SHALL INDEMNIFY THE AGENT AND THE LENDERS FOR ANY AND ALL COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING LEGAL FEES, INCURRED BY THE AGENT OR ANY LENDER WITH RESPECT TO SUCH LIABILITIES, SUCH LIABILITY TO INDEMNIFY TO BE BORNE JOINTLY AND SEVERALLY BY THE ASSIGNORS.

#### 17. NOTICES.

All notices and other communications made or required to be given pursuant to this Trademark Agreement shall be in writing and shall be delivered in hand, mailed by United States registered or certified first-class mail, postage prepaid, or sent by telegraph, telecopy or telex and confirmed by delivery via courier or postal service, addressed as follows:

(a) if to the Assignors, at 4001 Via Oro Avenue, Suite 200, Long Beach, California 90810, Attention: Chief Financial Officer, President, or at such other address for notice as the Assignors shall last have furnished in writing to the person giving the notice; and

(b) if to the Agent, at 100 Federal Street, Boston, Massachusetts 02110, Attention: Thomas P. Tansi, Vice President, or at such other address for notice as the Agent shall last have furnished in writing to the person giving the notice.

Any such notice or demand shall be deemed to have been duly given or made and to have become effective (i) if delivered by hand to a responsible officer of the party to which it is directed, at the time of the receipt thereof by such officer, (ii) if sent by registered or certified first-class mail, postage prepaid, two (2) Business Days after the posting thereof, and (iii) if sent by telegraph, telecopy, or telex, at the time of the dispatch thereof, if in normal business hours in the country of receipt, or otherwise at the opening of business on the following Business Day.

#### 18. AMENDMENT AND WAIVER.

This Trademark Agreement is subject to modification only by a writing signed by the Agent (with the consent of the Majority Lenders) and the Assignors, except as provided in §6.2. The Agent shall not be deemed to have waived any right hereunder



unless such waiver shall be in writing and signed by the Agent and the Majority Lenders. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

19. GOVERNING LAW; CONSENT TO JURISDICTION.

THIS TRADEMARK AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS. Each Assignor agrees that any suit for the enforcement of this Trademark Agreement may be brought in the courts of the Commonwealth of Massachusetts or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Assignors by mail at the address specified in §17. Each Assignor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

20. WAIVER OF JURY TRIAL.

EACH ASSIGNOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS TRADEMARK AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by law, each Assignor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. Each Assignor (i) certifies that neither the Agent or any Lender nor any representative, agent or attorney of the Agent or any Lender has represented, expressly or otherwise, that the Agent or any Lender would not, in the event of litigation, seek to enforce the foregoing waivers, and (ii) acknowledges that, in entering into the Credit Agreement and the other Loan Documents to which the Agent or any Lender is a party, the Agent and the Lenders are relying upon, among other things, the waivers and certifications contained in this §20.

21. MISCELLANEOUS.

The headings of each section of this Trademark Agreement are for convenience only and shall not define or limit the provisions thereof. This Trademark Agreement and all rights and obligations hereunder shall be binding upon each Assignor and its respective successors and assigns, and shall inure to the benefit of the Agent, the Lenders and their respective successors and assigns. In the event of any irreconcilable conflict between the provisions of this Trademark Agreement and the Credit Agreement, or between this Trademark Agreement and the Security Agreement, the provisions of the Credit Agreement or the Security Agreement, as the case may be, shall control. If any term of this Trademark Agreement shall be held to be invalid,

illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Trademark Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. Each Assignor acknowledges receipt of a copy of this Trademark Agreement.

*[Remainder of this Page Intentionally Left Blank]*

IN WITNESS WHEREOF, this Trademark Agreement has been executed as of the day and year first above written.

CKR ACQUISITION CORP.

By: St L. Tanner  
Name: STEVEN L. TANNER  
Title: CFO

CHEVYS RESTAURANTS, LLC

By: St L. Tanner  
Name: STEVEN L. TANNER  
Title: CFO

Accepted:

FLEET NATIONAL BANK, as Agent

By: \_\_\_\_\_  
Name:  
Title:

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF California )  
COUNTY OF Los Angeles ) ss.

Before me, the undersigned, a Notary Public in and for the and county aforesaid, on this 11<sup>th</sup> day of January, 2005, personally appeared STEVEN L. Tanner to me known personally, and who, being by me duly sworn, deposes and says that he is the CFO of CKR ACQUISITION CORP., and that said instrument was signed and sealed on behalf of said corporations by authority of their respective Board of Directors, and said acknowledged said instrument to be the free act and deed of said corporations.

Deborah M. Whitlow

Notary Public

My commission expires: 7/22/08



CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF California  
COUNTY OF Los Angeles ) ss.

Before me, the undersigned, a Notary Public in and for the and county aforesaid, on this 11th day of January, 2005, personally appeared STEVEN L. TANNER to me known personally, and who, being by me duly sworn, deposes and says that he is the CFO of CHEVYS RESTAURANTS, LLC, and that said instrument was signed and sealed on behalf of said corporations by authority of their respective Board of Directors, and said acknowledged said instrument to be the free act and deed of said corporations.

Deborah M. Whitlow  
Notary Public  
My commission expires: 7/22/08



IN WITNESS WHEREOF, this Trademark Agreement has been executed as of the day and year first above written.

**CKR ACQUISITION CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**CHEVYS RESTAURANTS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

Accepted:

**FLEET NATIONAL BANK, as Agent**

By: Cristin M. O'Hara  
Name: Cristin M. O'Hara  
Title: Director

## CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS

1

) SE.

1

COUNTY OF SUFFOLK

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 11 day of January, 2005, personally appeared CRISTINA M. D'HARA to me known personally, and who, being by me duly sworn, deposes and says that he or she is the DIRECTOR of FLEET NATIONAL BANK and that said instrument was signed and sealed on behalf of said institution by authority of its governing body, and said CRISTINA M. D'HARA acknowledged said instrument to be the free act and deed of said corporation.

Ellen F. Hickey

**Notary Public**

My commission expires: 9/12/2008



ELLEN F. HICKEY  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
Sept. 12, 2008

## EXHIBIT 1

### ASSIGNMENT OF TRADEMARKS AND SERVICE MARKS

WHEREAS, \_\_\_\_\_ a corporation organized and existing under the laws of the State of \_\_\_\_\_, having a place of business at 4001 Via Oro Avenue, Suite 200, Long Beach, California 90810 (the "Assignor"), has adopted and used and is using the trademarks and service marks (the "Marks") identified on the Annex hereto, and is the owner of the registrations of and pending registration applications for such Marks in the United States Patent and Trademark Office and certain other jurisdictions identified on such Annex; and

WHEREAS, FLEET NATIONAL BANK, a national banking association, having a place of business at 100 Federal Street, Boston, Massachusetts 02110 (the "Assignee"), is desirous of acquiring the Marks and the registrations thereof and registration applications therefor;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Assignor does hereby assign, sell and transfer unto the Assignee all right, title and interest in and to the Marks, together with (i) the registrations of and registration applications for the Marks, (ii) the goodwill of the business symbolized by and associated with the Marks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Marks or the registrations thereof or such associated goodwill.

This Assignment of Trademarks and Service Marks is intended to and shall take effect as a sealed instrument at such time as the Assignee shall complete this instrument by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Trademarks and Service Marks below.

*[Remainder of Page Intentionally Left Blank]*



IN WITNESS WHEREOF, the Assignor, by its duly authorized officer, has executed this assignment, as an instrument under seal, on this \_\_\_\_ day of \_\_\_\_\_, 2004.

**CKR ACQUISITION CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**CHEVYS RESTAURANTS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

The foregoing assignment of the Marks and the registrations thereof and registration applications therefor by the Assignor to the Assignee is hereby accepted as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**FLEET NATIONAL BANK**, as Agent

By: \_\_\_\_\_

Name:

Title:

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for the and county aforesaid, on  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared  
\_\_\_\_\_ to me known personally, and who, being  
by me duly sworn, deposes and says that he is the  
\_\_\_\_\_ of CKR ACQUISITION CORP.,  
and that said instrument was signed and sealed on behalf of said corporations by  
authority of their respective Board of Directors, and said  
\_\_\_\_\_ acknowledged said instrument to be the  
free act and deed of said corporations.

\_\_\_\_\_  
Notary Public  
My commission expires:

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF \_\_\_\_\_)  
\_\_\_\_\_) ss.  
COUNTY OF \_\_\_\_\_)

Before me, the undersigned, a Notary Public in and for the and county aforesaid, on  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared  
\_\_\_\_\_ to me known personally, and who, being  
by me duly sworn, deposes and says that he is the  
\_\_\_\_\_ of CHEVYS RESTAURANTS LLC,  
and that said instrument was signed and sealed on behalf of said corporations by  
authority of their respective Board of Directors, and said  
\_\_\_\_\_ acknowledged said instrument to be the  
free act and deed of said corporations.

\_\_\_\_\_  
Notary Public  
My commission expires:

ANNEX

U.S. Trademarks and Trademark Registrations

Assignor: Chevys Restaurants, LLC

Trademark or Service Mark	Federal Registrations -- United States Patent and Trademark Office	
	Serial/Registration No.	Filing/Registration Date
A FEAST FOR ALL YOUR SENSES	1,402,576	07/22/86
BIG CITY WRAPS	2,213,618	12/29/98
BIG CITY WRAPS (Design)	2,047,645	03/25/97
CASA LUPITA	1,384,873	03/04/86
CHEVYS EXPRESS MEX	2,375,705	08/08/00
CHEVYS EXPRESS MEX (and Design)	2,579,149	06/11/02
CHEVYS FRESH MEX	2,066,652	06/03/97
CHEVYS FRESH MEX	2,251,029	06/08/99
CHEVYS MEXICAN RESTAURANT	2,238,359	04/13/99
CHEVYS MEXICAN RESTAURANT (Stylized)	1,624,237	11/20/90
Design of a Woman (Casa Lupita)	1,311,681	12/25/84
EL MACHINO	1,951,323	01/23/96
FAMOUS FOR FAJITAS AND FIESTAS	1,446,992	07/07/87
FRESH MEX	1,613,407	09/11/90

Trademark or Service Mark	Federal Registrations -- United States Patent and Trademark Office	
	Serial/Registration No.	Filing/Registration Date
FRESH MEX	1,750,598	02/02/93
FRESH MEX TEQUINI	2,409,955	12/05/00
FUZIO	2,248,206	05/25/99
FUZIO FIRECRACKER PORK FUSILLI	2,601,239	07/30/02
FUZIO UNIVERSAL PASTA	2,404,991	11/21/00
FUZIO UNIVERSAL PASTA (and Design)	2,409,717	12/05/00
FUZIOTINI	2,300,529	12/14/99
Miscellaneous Design - Ice Machine	2,218,094	01/19/99
RIO BRAVO and Stylized Horizontal Design	2,479,519	08/21/01
RIO BRAVO and Stylized Stack Design	2,499,694	10/23/01
RIO BRAVO CANTINA	1,388,655	04/01/86
RIO BRAVO CANTINA (and Design)	1,434,357	03/24/87
RIO BRAVO CANTINA (and Design)	2,163,201	06/09/98
UNFORGETTABLE MEX	2,277,837	09/14/99
UNIVERSAL MARTINIS	2,375,706	08/08/00
UNIVERSAL PASTA	2,496,482	10/09/01
VIVA GRANDE LUNCH BAR	1,338,521	05/28/85

**Pending U.S. Trademarks and Trademark Registrations**

**Assignor: Chevys Restaurants, LLC**

FUZIO & Design	78/238997	04/17/03
----------------	-----------	----------

**Foreign Trademark Registrations**

**Assignor: Chevys Restaurants, LLC**

Trademark or <u>Service Mark(Class)</u>	<u>Country</u>	Foreign Registrations	
		Foreign <u>Registration No.</u>	<u>Reg. Date</u>
CHEVYS	European Community	196,626	11/18/98
CHEVYS MEXICAN RESTAURANT (Stylized)	Canada	TMA46241	08/31/94
FRESH MEX	European Community	196,584	05/08/00
RIO BRAVO CANTINA	Canada	TMA50525	12/08/98